

REMARKS

This application has been carefully reconsidered in view of the Office Action of September 24, 2003. By this amendment, claim 37 has been amended to correct the informalities at lines 6 and 10 as noted in the Office Action. In addition, in view of the rejection of claim 49 under the second paragraph of 35 U.S.C. §112, the formula $C_5R'_m$ to indicate an indenyl group, has been changed to $C_9R'_m$. This, of course, is consistent with the carbon atom content of an indenyl group, which contains nine carbon atoms. A similar amendment is made in claims 50, 51, 56 and 57.

The allowance of claims 37-55 and 62-66 (subject to the noted informalities in claims 37 and 49) is acknowledged with appreciation. Reconsideration and allowance of the rejected claims 56-61 is respectfully requested in view of the following remarks.

The rejection of claims 56-61 as anticipated by U.S. Patent No. 4,769,510 to Kaminsky et al. is respectfully traversed. With respect to the Kaminsky patent and the disclosure therein at column 1, lines 63-67 and column 2, lines 1-19, it is noted that the Kaminsky patent, to the extent it discloses a bridged ligand structure with a linear $C_1 - C_4$ hydrocarbyl radical, is directed to an unsymmetrical hydrocarbon radical. While the Kaminsky disclosure goes on to state that A'_1 and A'_2 may be identical, Kaminsky nevertheless characterizes the ligand structure as being unsymmetrical. In any case, Kaminsky fails to disclose an indenyl group which is substituted with at least one hydrocarbyl radical as set forth in applicant's independent claim 56. In this respect, the reference to substituted groups in Kaminsky is with reference to cyclopentadienyl groups and not indenyl groups. This is further reinforced by the examples in Kaminsky and the Kaminsky claims, which are directed to ethylene-bis(4,5,6,7-tetrahydroindenyl) zirconium dichloride. Applicant's claim 56 and the claims dependent thereon, specify an indenyl group which is substituted with at least one hydrocarbyl radical having from 1 to 20 carbon atoms.

Thus, Kaminsky clearly does not anticipate or render obvious applicant's invention, which requires an isotactic polymer produced by a chiral stereorigid metallocene incorporating a ligand structure in which the indenyl groups are substituted with at least one hydrocarbyl radical. In fact, to modify the teachings of Kaminsky to arrive at applicant's invention would be directly contrary to the teachings of the reference in which an unsubstituted indenyl group is used as an alternative to the substituted cyclopentadienyl group.

The Examiner is respectfully requested to consider further the issue of the restriction requirement between the claims of Group I and Group II and withdraw the finality of the requirement. The decision of *In re Thorpe* cited in the Office Action which addresses the patentability of product by process claims would appear to be inapposite here. The Examiner is again respectfully requested to consider the requirement for distinctiveness as set forth in MPEP §802.01 as referenced in applicant's response of May 13, 2003 and also the requirement of a serious burden as set forth in MPEP §803. The analysis put forth in the Office Action regarding product by process claims in *In re Thorpe* simply does address the issue raised in the previous response regarding the requirement that the two groups of claims be patentable over each other. In view of this circumstance and the fact that there is no serious burden on the Examiner supporting a restriction requirement, it is respectfully requested that the restriction requirement be withdrawn and the claims of Group II be examined with the remaining claims in the application.

For the reasons advanced above, it is respectfully submitted that claims 56-61 patentably distinguish over the prior art along with claims 37-55 and 62-66, previously indicated to be directed to allowable subject matter.

The Commissioner is authorized to charge any fee required in connection with the submission of this document to the Locke Liddell & Sapp LLP deposit account no. 12-1781.

Respectfully submitted,



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Date: December 23, 2003
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